

GRANT F. AND JESSIE FERN WOODWARD

IBLA 84-802

Decided May 31, 1985

Appeal from a decision of the Eastern States Office, Bureau of Land Management, rejecting color-of-title application ES-32638.

Affirmed.

1. Color or Claim of Title: Generally -- Color or Claim of Title:  
Applications -- Color or Claim of Title: Good Faith -- Color or Claim  
of Title: Privity

The burden of proving a valid class 1 color-of-title claim is upon the applicants. A color-of-title application is properly rejected where the applicants claim a chain of title originating with a conveyance executed subsequent to a withdrawal for Federal purposes and within 20 years of the time the applicants learned of the title defect.

APPEARANCES: John E. Hoffman, Esq., Fort Wayne, Indiana, for appellants.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Grant F. and Jessie Fern Woodward appeal from a decision of the Eastern States Office, Bureau of Land Management (BLM), dated June 18, 1984, rejecting their class 1 color-of-title application ES-32638. The Woodwards filed the application on June 17, 1983, to acquire under the Color of Title Act, 43 U.S.C. § 1068 (1982), an island in Smith Lake designated tract 37, T. 59 N., R. 26 W., fourth principal meridian, Itasca County, Minnesota (.18 acres). <sup>1/</sup> They state in their application that, although they first learned of the title defect in 1975, they are able to claim more than 20 years adverse possession and color of title through a deed dated January 12, 1973, from Cecil and Beatrice Gottschalk. However, the accompanying form 2540-2 (Conveyances Affecting Color or Claim of Title), certified by the office of the Itasca County Recorder, only shows a chain of title traced back to September 15, 1959, when a grant from John W. Adams, et al., to R. J. Beaudoin, et al., was recorded. BLM rejected the application because the

---

<sup>1/</sup> The Woodwards' application and other references to the island purport the island is 0.25 acre. BLM's assignment of 0.18 acre is a result of the measurements taken when it conducted a survey of the island in October 1978.

land described therein was withdrawn under Presidential Proclamation No. 2216, Dec. 29, 1936, (50 Stat. 1803) 2/ before the applicants' color-of-title claim was initiated and, therefore, the parcel was not available. Proclamation No. 2216 provided that certain designated public lands, including T. 59 N., R. 26 W., fourth principal meridian, were withdrawn for inclusion in the Chippewa National Forest, subject to valid existing rights.

In their statement of reasons, the Woodwards challenge BLM's conclusion that the island was "undisposed of" when Proclamation No. 2216 was issued. They claim that the parcel was once attached to lot 5 (Watonga Beach), sec. 35, T. 59 N., R. 26 W., fourth principal meridian, and was identifiable as part of the conveyance of such property. Their title to the island, they assert, "stems from the former owners of said Lot 5." 3/ In support of their arguments, they present testimony that predating the 1936 withdrawal the parcel in question contained cabins belonging to the Watonga Beach Resort and a roadway existed across a narrow neck of land connecting the parcel to lot 5. 4/

[1] In order to establish a class 1 color-of-title claim, an applicant must prove that the land in question has been held in good faith and in peaceful, adverse possession by the applicant, his ancestors, or grantors, under color of title, for more than 20 years, and that valuable improvements have been placed on the land or some part of the land has been reduced to cultivation. 43 U.S.C. § 1068 (1982); 43 CFR 2540.0-5(b); Middle Rio Grande Conservancy District, 86 IBLA 41 (1985); Jerry G. Perry, 85 IBLA 93 (1985). The obligation of proving a valid color-of-title claim is upon the claimants and failure to carry this burden with respect to any of the elements for a valid color-of-title claim is fatal to the application. Id. Unless the Woodwards' application displays satisfactory compliance with each of the requirements for a class 1 claim, their application is properly rejected.

As a basic rule, there can be no valid claim of title under the Color of Title Act without a document or instrument of conveyance which contains a description upon which the color-of-title claim is based. See Robert H. Cooper, 75 IBLA 354, 356 (1983). Appellants have presented probative evidence which suggests the land in question was occupied under claim of title prior to the time it was withdrawn under Proclamation No. 2216. However, the

---

2/ See also 3 CFR ch. 1 at 65-66 (1936-1938 compilation).

3/ Our review of this color-of-title application is based on the conclusion that the withdrawal under Proclamation No. 2216 was effective to withdraw the land at issue. Only valid existing rights were excluded from the operation of the proclamation. We assume any purported occupancy on the land prior to Dec. 29, 1936, was not by valid existing right but by trespass under pretense of title. If not, documentation of a grant from the United States should be available and a color-of-title claim would be an improper and unnecessary method to assert such title.

4/ According to appellants' arguments, the parcel became isolated in Smith Lake as an island when the narrow neck of land connecting it to the mainland was "washed away" in the "middle or late 1940's." Appellants attribute this action to construction of a road across the lake by "the CCC" in "the late 1930's." See Statement of Reasons, item 4.

origin of title to which appellants trace their claim in their application is the September 12, 1959, conveyance. This chain of title has not been supplemented. Their failure to produce evidence that a qualifying claim was initiated by their predecessors before that date results in the failure of their application.

First, BLM may properly reject a class 1 color-of-title application where the applicants' own chain of title originated at a time when the land has been withdrawn or reserved for Federal purposes, because the land could, therefore, not be held in "peaceful, adverse possession" as required by 43 U.S.C. § 1068 (1982). Richard R. Christensen, 85 IBLA 108 (1985); John S. Cluett, 52 IBLA 141 (1981). Since the Woodwards have failed to trace an unbroken chain of peaceful, adverse possession linked to a qualified party possessing the land in question prior to the December 29, 1936, withdrawal date, their evidence falls short of satisfying their burden of proving entitlement. Therefore, we conclude that, based on the record, appellants have failed to establish peaceful, adverse possession dating from a time when the lands were available.

Second, a 20-year period of good faith possession must be achieved prior to the time the claimants learned of the title defect. Middle Rio Grande Conservancy District, *supra* at 43; Kim C. Evans, 82 IBLA 319 (1984). Appellants have stated they first learned their purported title was defective in 1975. The fact that their evidence of origin of title does not show satisfactory compliance with the requisite period of good faith possession is also a proper basis for rejecting the application.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appealed decision is affirmed.

Franklin D. Arness  
Administrative Judge

We concur:

Gail M. Frazier  
Administrative Judge

Will A. Irwin  
Administrative Judge

